1	PETER D. KEISLER	
	Assistant Attorney General	
2	KAREN P. HEWITT	
	United States Attorney	
3	TOM STAHL	
	Assistant U.S. Attorney	
4	Chief, Civil Division	
	880 Front Street, Room 6293	
5	San Diego, California 92101-8893	
- 1	Telephone: (619) 557-5662 R. MICHAEL UNDERHILL	
6	R. MICHAEL UNDERHILL	
	Attorney in Charge, West Coast Office	
7	Torts Branch, Civil Division	
	R. SCOTT BLAZE	
8	Senior Admiralty Counsel	
	Torts Branch, Civil Division	
9	U.S. Department of Justice P.O. Box 36028	
LO	450 Golden Gate Avenue, Room 7-5395	
	San Francisco, California 94102-3463	
, ,	Telephone: (415) 436-6635	
L1	Fax: (415) 436-6632	
L2	scott.blaze@usdoj.gov	
	Scott.blaze(a)dsdoj.gov	
13	Attorney for Defendant	
	United States of America	
L4	Omtou States of Limitation	
	UNITED STATES DIS	TRICT COURT
L5		
	SOUTHERN DISTRICT	OF CALIFORNIA
16	CONTACT OF THE PROPERTY OF THE	OF THE OF CHICOOLF WOLL WINC
	OSWALDO ENRIQUE TOBAR, et al.	Civil No. 07-CV-00817-WQH-WMC
17	D1 - '4' CC-)) IN ADMIRALTY
	Plaintiffs,) IN ADMIKALI I
L8		<i>(</i>
	V.	<i>)</i>
19	UNITED STATES OF AMERICA,) DECLARATION OF COUNSEL,
, , l	UNITED STATES OF AMERICA,	R. SCOTT BLAZE,
20	Defendant.) IN SUPPORT OF UNITED STATES'
21	Defendant.) MOTION TO DISMISS
ا ــ ک) MOTION TO DISMISS
22	R. Scott Blaze, being duly sworn, declares:	
	K. Scott Diaze, being duty sworn, declares.	
23	1. That I counsel of record for defendan	t United States
-	1. That I counsel of feeder for defendant	t Office States.
24	2. That attachment 1 hereto is a true cop	by from the official files of the United States
	2. That attachment I note to is a trace of	,
25	Department of Justice of plaintiffs' complaint.	
	Department of vasilee of planting complaint	
26		
ľ		
27		
_		
28		
I	DECLARATION OF R. SCOTT BLAZE	07-CV-00817-WOH-WMC

- 3. That attachment 2 hereto is a true copy from the official files of the Department of Justice of the ruling in the matter of <u>Liang-Tuan Wei v. Immigration and Naturalization</u>, *et al.*, SA CV 05-217-VBF(ANx)(C.D. CA, March 26, 2007).
- That attachment 3 hereto is a true copy from the official files of the Department of Justice of the complete initial disclosures by plaintiffs served on the United States.
- 5 That attachment 4 hereto is a true copy from the official files of the Department of Justice of the administrative claim of one of the plaintiffs, Francisco Arteago.
- 6. That attachment 5 hereto is a true copy from the official files of the Department of Justice of letter from plaintiffs' counsel, Walter Boyaki, to the U.S. Coast Guard Claims Chief, dated September 11, 2006.
- 7 That attachment 6 hereto is a true copy from the official files of the Department of Justice of the administrative claim of one of the plaintiffs, Oswaldo Tobar.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed on August 30, 2007.

CERTIFICATE OF SERVICE I HEREBY CERTIFY that on August <u>31</u>, 2007, I mailed a copy of the foregoing DECLARATION OF R. SCOTT BLAZE IN SUPPORT OF UNITED STATES' MOTION TO DISMISS by first-class mail, postage prepaid, to: Walter L Boyaki, Esq. Miranda & Boyaki 4621 Pershing Drive El Paso, Texas 79903 Albert W. Morris 1025 Cynthia Ave. Pasadena, California 91107 DECLARATION OF R. SCOTT BLAZE

IN SUPPORT OF UNITED STATES' MOTION TO DISMISS

07-CV-00817-WQH-WMC

United States District Cours Southern District of Texes IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS JAN 04 2007 **GALVESTON DIVISION** Michael N. Milby, Cierk OSWALDO ENRIQUE TOBAR,)(ROSA CARMELINA ZAMBRANO LUCAS,)(JUNIOR IVAN PICO ALAVA,)(SEGUNDO MATIAS ZAMBRANO ALONZO,)(FRANCISCO GABRIEL YOLE ARTEAGO.)(FAUSTO LUPERCIO ARIAS CASTANEDA,)(FRABRICIO BAYRON CEDENO,)(JOFFRE JOHNNY CEDENO CEDENO,)(LINDON CLEOFE CEDENO CEDENO.)(RAMON ELIADES RAMON VELEZ CEDENO.)(DANIEL DAVID QUIMI CHALEN,)(PABLO EDUARDO LUCAS CONFORME,)(RAMON EDUARDO PILLIGUA CONFORME,)(CIRO MARIANO LOPEZ MERO.)(PEDRO MANUEL LOPEZ MERO, NO.)(JOSE EDUARDO LUCAS MERO,)(LUIS ANTONIO PENAFIEL MERO,)(PEDRO JOSE REYES MERO,)(TELMO ARCADIO CHICA OBANDO,)(LUIS MIGUEL CEDENO PICO,)(JAIME GUSTAVO PALMA PINARGOTE,)(YARDY KLEVER FLORES SEGOVIA,)(PACHO HERNANDEZ SOLORZANO,)(CARLOS WILFRIDO VELIZ VELEZ,)(CARLOS ORLANDO VELEZ ZAMBRANO,)(JOSE LUIS ZAMBRANO, ZAMBRANO,)()(Plaintiffs,)()(٧.)()(UNITED STATES OF AMERICA.)()(Defendant.)(

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, OSWALDO ENRIQUE TOBAR, ROSA CARMELINA ZAMBRANO LUCAS,
JUNIOR IVAN PICO ALAVA, SEGUNDO MATIAS ZAMBRANO ALONZO, FRANCISCO
GABRIEL YOLE ARTEAGO, FAUSTO LUPERCIO ARIAS CASTANEDA, FRABRICIO BAYRON

PAGE 1 OF 5

CEDENO, JOFFRE JOHNNY CEDENO CEDENO, LINDON CLEOFE CEDENO CEDENO, RAMON ELIADES RAMON VELEZ CEDENO, DANIEL DAVID QUIMI CHALEN, PABLO EDUARDO LUCAS CONFORME, RAMON EDUARDO PILLIGUA CONFORME, CIRO MARIANO LOPEZ MERO, PEDRO MANUEL LOPEZ MERO, JOSE EDUARDO LUCAS MERO, LUIS ANTONIO PENAFIEL MERO, PEDRO JOSE REYES MERO, TELMO ARCADIO CHICA OBANDO, LUIS MIGUEL CEDENO PICO, JAIME GUSTAVO PALMA PINARGOTE, YARDY KLEVER FLORES SEGOVIA, PACHO HERNANDEZ SOLORZANO, CARLOS WILFRIDO VELIZ VELEZ, CARLOS ORLANDO VELEZ ZAMBRANO, JOSE LUIS ZAMBRANO, ZAMBRANO, hereinafter called Plaintiffs, complaining of the UNITED STATES OF AMERICA, hereinafter referred to as Defendant, and would respectfully show the Court the following:

I.

This action arises in part under the Federal Tort Claims Act, 28 U.S.C., Section 1346(b) and 2661 et. seq. and particularly 28 U.S.C. Section 2680(h), the suits in Admiralty Act 42 U.S.C. §741 et. seq. and the Public Vessels Act, 46 U.S.C. Section 781, et. seq.

П.

Plaintiffs reside in the country of Ecuador. The Defendant owns and operates a U.S. Coast Guard and U.S. Navy facility in Galveston, Texas.

ш.

On or about October 5, 2005 in international waters off the Galapagos Islands in the Pacific Ocean the agents of the Defendant unlawfully and negligently, stopped, searched, arrested, detained and imprisoned the Plaintiffs, seized the boat, destroyed the cargo and fish owned by Plaintiffs ROSA CARMELINA ZAMBRANO LUCAS, and OSWALDO ENRIQUE TOBAR, for allegedly smuggling and possessing illegal drugs.

IV.

At all times herein mentioned, the acts of commission or omission of agents of the Defendant were on behalf of the Defendant and were in the course and scope of their employment or agency or such that their actions were intentional as law enforcement officials as defined by 28 U.S.C. Section 2680 (h). The Government agents or employees that were responsible for the damages done to Plaintiffs would be liable just as if they were private persons. No charges were ever subsequently brought against any Plaintiff. Defendant in fact, apologized to the Plaintiffs for the actions of the agents.

V.

The agents of the Defendant were careless, reckless and negligent in this case or alternatively their acts were intentional in that they:

- Arrested and detained the Plaintiffs for no reason for over 99 days.
- 2. Failed to ascertain that Plaintiffs were not drug dealers and/or smugglers.
- 3. Arrested the Plaintiffs without probable cause.
- 4. Falsely imprisoned the Plaintiffs for no reason despite Plaintiffs' protestations.
- Failed to release the Plaintiffs and their vessel when it became known they were not drug smugglers and did not possess any illegal substances.
- 6. Violated the Plaintiffs' constitutional rights under the IV, V, VI, VIII, and XIV amendments to the United States Constitution.
- Violated international law by boarding and seizing a foreign flagged vessel in international waters.
- 8. Committed various and numerous assaults on Plaintiffs persons during their imprisonment.

- Wrongfully seized and kept the vessel owned by Plaintiffs ROSA CARMELINA
 ZAMBRANO LUCAS and OSWALDO ENRIQUE TOBAR.
- 10. Violated right of privacy of all the Plaintiffs.
- 11. Destroyed the personal property of the Plaintiffs without probable cause.
- 12. Held the Plaintiffs as prisoners under armed guard.
- 13. Violated treaty obligations with Ecuador.

VI.

As a direct and proximate result of one or more of the foregoing acts or omissions on the part of the agents of the Defendant, done in the course and scope of their job the Plaintiffs were permanently injured, damaged and infringed upon, all of which will affect them for the remainder of their natural lives.

VII.

Further, as a direct and proximate result of said acts of commission or omission on the part of Defendant's agents or employees, the Plaintiffs have suffered the following injuries:

- 1. All the Plaintiffs were imprisoned in a most hostile environment.
- 2. All the Plaintiffs have suffered severe humiliation:
- All the Plaintiffs have suffered physical and mental pain and suffering and will continue to do so in the future;
- 4. All the Plaintiffs have suffered extreme anxiety and depression and will continue to do so in the future;
- ROSA CARMELINA ZAMBRANO LUCAS, COMMANDER OSWALDO ENRIQUE TOBAR had their personal property destroyed.
- 6. They have sustained property damage to the vessel and loss of their catch of fish in the amount of \$500,000.00.

PAGE 4 OF 5

- 7. They have lost the use of the vessel.
- 8. They suffered public ridicule.

By reason of all the foregoing, the Plaintiffs have been damaged in the sum of \$5,025,000.00.

VII.

On April 18, 2006 Plaintiffs filed a claim for injuries with the United States Navy and Coast Guard. Six months have passed without any action taken by the Defendant on the claim. This is tantamount to denial of the claim.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited and served to appear and answer herein, and that upon final trial of this cause, Plaintiffs have judgment against the Defendant in the sum of \$5,025,000.00 and for such other and further relief, both general and special, at law and in equity, to which the Plaintiffs are justly entitled.

Respectfully submitted,

MIRANDA & BOYAKI

Attorneys at Law 4621 Pershing Drive El Paso, Texas 79903

Tel.: (915) 566-8688

Fax:/(915) 566-5906

WALPER L. BOYAKI
Attorney for Plaintiffs

State Bar No. 02759500

HERIBERTO RAMOS

Ramos & Associates 917 Franklin, Suite 300

Houston, Texas 77002

State Bar No. 24033102

DEFENDANTS

JS 44	
IRAY.	07/89)

MITED STATES DISTRICT COURT

CIVIL COVER SHEET

The JS 44 ciril cover sheet and the information contained herein neither replace nor supplement the filling and stervice of pleadings or other papers at required by law, except at provided by local rules of court. This form, exproved by the Audicial Conference of the United States in September 1974, it required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS				DEFENDANT	rs			
JUNIOR IVAN PICO ALAVA, ET AL				UNITED STATES OF AMERICA				
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Case 8:05-cv-00217-VBF-AN

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UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA



CIVIL MINUTES -- GENERAL

Case No.

SA CV 05-217-VBF(ANx)

Dated: March 26, 2007

Title:

Liang-Tuan Wei -v- Immigration and Naturalization Service, et al.

PRESENT:

HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Rita Sanchez

Courtroom Deputy

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS):

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE ACTION FOR LACK OF SUBJECT

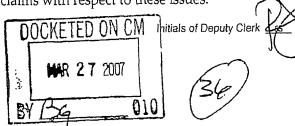
MATTER JURISDICTION [fld 2/27/07]

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The Court has read and considered Defendant United States' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), as well as Plaintiff Liang-Tuan Wei's Opposition, Defendant's Reply, and all other papers, declarations, and exhibits in this matter.

Defendant's Motion to Dismiss is GRANTED, because

- 1. Defendants have shown that
 - a. Its actions fall under the "admiralty" exception to the Federal Tort Claims
 Act's waiver of sovereign immunity, and
 - b. Its actions fall under the "discretionary function" exception to the Suits in Admiralty Act's waiver of sovereign immunity,
- 2. Plaintiff has not refuted any of Defendants' claims with respect to these issues.

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Case 8:05-cv-00217-VBF-AN Document 36 Filed 03/26/2007 Page 2 of 4

DISCUSSION

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1. Plaintiff's Claims Sound in Admiralty

28 U.S.C. §2680(d) provides that the FTCA's waiver of sovereign immunity does not apply to "[a]ny claim for which a remedy is provided by chapter 309 or 311 of title 46 relating to claims or suits in admiralty against the United States." The first reference is to the Suits in Admiralty Act ("SAA"), which provides a waiver of sovereign immunity for actions against the United States where, "if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained." 46 U.S.C. §30901.

Defendant argues that all of Plaintiff's claims could be maintained in admiralty. Defendant's Motion pp. 8-10. In its Opposition, Plaintiff does not dispute Defendant's characterization of the claims. Based on the papers before the court, it is uncontroverted that Defendant's behavior falls under the exception to the FTCA's waiver of sovereign immunity set forth in 28 U.S.C. §2680(d). Thus the Court holds that §2680 precludes Plaintiff from asserting the FTCA's waiver, and that Plaintiff may only invoke the waiver provided under the SAA.

2. The Discretionary-Function Exception Under The SAA

In Earles v. U.S., the 9th Circuit held that the discretionary-function exception provided in §2680(a) applies under the SAA as well as the FTCA. 939 F.2d 1028, 1032. A two-part test applies in determining whether the exception applies to a particular action by the government. First, the Court must determine whether the challenged action by its nature involves "an element of judgment or choice." Nurse v. United States, 226 F.3d 996, 1001 (9th Cir. 2000). Second, the Court must ask whether the conduct implement social, economic, or political policy considerations. This aspect of the Court's inquiry "accords with Congress' purpose in enacting the exception: to prevent judicial intervention in... the political, social, and economic judgments of governmental agencies." Berkovitz v. United States, 486 U.S. 531, 538 (1988).

Defendant asserts that the seizure and forfeiture of Plaintiff's vessel "involved the exercise of discretion by Government law enforcement agents," and musters a number of analogous cases supporting the claim that the Defendants' actions meet the public policy requirement. Defendant's Motion, pp. 13-18. In its Opposition, Plaintiff ignores the issue altogether, failing even to allege that the discretionary-function exception does not apply. Based on the papers before the Court, it

MINUTES FORM 90 CIVIL - GEN

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Case 8:05-cv-00217-VBF-AN

Document 36

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Page 3 of 4

is uncontroverted that Defendant's conduct falls under this exception to the SAA's waiver of sovereign immunity.

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3. Plaintiff's Failure to Name the United States As A Defendant

Plaintiff indeed failed to name the United States as a defendant in this action. However, the Court need not address this point, because Plaintiff has failed to allege that the Defendant's activities do not fall under the discretionary-function exception to the SAA's waiver of sovereign immunity.

4. The "Law Enforcement" Exception to the FTCA

Defendant has argued that even if the admiralty and discretionary-function exceptions to the FTCA's waiver of sovereign immunity did not apply, the law-enforcement exception under the FTCA would apply. This is one of the arguments in the Motion to which Plaintiff's Opposition actually responds. Plaintiff replies that because the crew members in question were ultimately acquitted of the criminal charges against them, \$2680(c)'s exception does not apply. As Defendant points out in its Reply brief, however, Plaintiff relies on only one of the four prongs of the exception. The exception set forth in \$2680(c) requires the fulfilment of four separate conditions for the exception to apply. One of these requirements is that the claimant's interest was not actually forfeited. 28 U.S.C. \$2680(c)(2). Plaintiff has admitted that its interest was administratively forfeited. Plaintiff's entire cause of action boils down to the assertion that the vessel was wrongfully forfeited. See, e.g., Complaint ¶16. As a result, Plaintiff's arguments concerning the inapplicability of the law-enforcement exception fail. However, the Court need not determine the applicability of the law-enforcement exception generally, because Defendant has already established that the discretionary-function exception requires the dismissal of Plaintiff's cause of action.

5. The PVA's Waiver of Sovereign Immunity

Defendant addresses the question whether Plaintiff might avail itself of the waiver of sovereign immunity under the PVA. Plaintiff never alleged subject matter jurisdiction under the PVA's exception, but Defendant preemptively asserted that if Plaintiff's cause of action were cognizable under the PVA, it would be precluded by the statute of limitations in 46 U.S.C. §745. In its Opposition, Plaintiff responded that §745 was repealed on October 6, 2006. Why it bothered to raise this point is unclear, however, because Plaintiff still failed to allege subject matter jurisdiction

MINUTES FORM 90 CIVIL - GEN Initials of Deputy Clerk __rs_

Case 8:05-cv-00217-VBF-AN Document 36 Filed 03/26/2007 Page 4 of 4

under the PVA. Defendant responded in its Reply that §745 was not repealed, but rather recodified as §30905.

In any event, the Court need not decide this question. Plaintiff has consistently asserted.

In any event, the Court need not decide this question. Plaintiff has consistently asserted only one source of the waiver of sovereign immunity: The Federal Tort Claims Act. But because Plaintiff has not refuted Defendant's argument that Plaintiff's claims fall under the admiralty exception in 28 U.S.C. §2680(d), Plaintiff cannot avail itself of the FTCA's exception. Therefore, the PVA's waiver cannot save Plaintiff's claim.

CONCLUSION

Defendant's Motion to Dismiss sets forth a credible case for the applicability of the exception to the FTCA's waiver of sovereign immunity set forth in 28 U.S.C. §2680, and of the applicability of the discretionary-function exception to the Suits in Admiralty Act's waiver of sovereign immunity. Plaintiff's Complaint and Opposition to the Motion fail to raise any counter-arguments with respect to these matters. Taken on their face, and assuming the truth of every assertion contained in them, Plaintiff's papers fail to establish that this Court has subject matter jurisdiction in this case.

Accordingly, it is the Court's ruling that Defendant's Motion to dismiss this cause of action is **GRANTED**.

The Clerk shall serve copies of this Order on both parties.

IT IS SO ORDERED.

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OSWALDO ENRIQUE TOBAR, ET AL,

Plaintlffs.

NO. 3:07-CV-00003

UNITED STATES OF AMERICA.

Defendant.

PLAINTIFFS' INITIAL DISOLOSURES

- a district ca Persons likely to have discoverable information in support of Plaintiff's claims: Α.

Plaintiffs:

Oswaldo Enrique Tobar, Rosa Carmelina Zambrano Lucas ... Junior Ivan Pico Alava Segundo Matias Zambrano Alonzo Francisco Gabriel Yole Arteago Fausto Lupercio Arias Castaneda Frabricio Bayron Cedeno Joffre Johnny Cedeno Cedeno and the state of Lindon Cleofe Cedeno Cedeno
Ramon Eliades Ramon Velez Cedeno
Parlel Parlel Outral Chalen Daniel David Quimi Chalen Pablo Eduardo Lucas Conforme Ramon Eduardo Pilligua Conforme Ciro Mariano Lopez Mero Pedro Manuel Lopez Mero Jose Eduardo Lucas Mero Luis Antonio Penafiel Mero Pedro Jose Reyes Mero Telmo Arcadio Chica Obando Luis Miguel Cedeno Pico Jaime Gustavo Palma Pinargote Yardy Klever Flores Segovia Pacho Hernandez Solorzano Carlos Wilfrido Veliz Velez Carlos Orlando Velez Zambrano Jose Luis Zambrano, Zambrano

PAGE 1 OF 3

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MIRANDA & BOYAKI

2003/004

2. Agents of the Defendant:

CDR Awai LT CRD James Brown GD Owen Lawrence K. Ellis

All those listed in Defendant's disclosures, which

- 4. Families of the Plaintiffs
- 5. The parties experts to include:

Leonidas Villagran Ecuadorian Lawyer Guayaqull, Ecuador

6. Other witnesses who may be identified during discovery.

B. Documents in support of claims:

- 1. Coast Guard and Navy regulations.
- 2. Letters from the Coast Guard to the Plaintiffs asking for damages.
- 3. Curriculum vitae of each of Plaintiffs' experts.
- 4. Video tape and pictures of Plaintiffs' fishing boat.
- 5. Costs of Plaintiffs lost eatch to include the cost of tuna.

C. <u>Damage computation</u>;

- 1. Documents to show lost earning capacity, if any and lost wages,
- 2. Documents to show lost fishing catch.
- Documents to show the cost of a wasted fishing trip to include lost fuel, food, wages, etc.

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4. Documents to show damage to the fishing boat,

tisting boat.

PAGE 2 OF 3

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Ø 004/004

D, Expert witnesses:

> 1. Leonidas Villagran Ecuadorian Lawyer Guayaquil, Ecuador

> > Mr. Villagan will testify concerning the violations of Ecuadorian law.

Respectfully submitted,

MIRANDA & BOYAKI

Attorneys at Law 4621 Pershing Drive El Paso, Texas 79903 Tel.: (915) 566-8688 Fax: (915) 566-5906

WALTER L. BOYAKI

Attorney for Plaintiff

State Bar No. 02759500

HERIBERTO RAMOS

Ramos & Associates 917 Franklin, Suite 300 Houston, Texas 77002 State Bar No. 24033102

I, WALTER L. BOYAKI, do hereby certify that a true and correct copy of the foregoing instrument was forwarded to JOHN S. LUCE, JR., Trial Attorney, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 14271, Washington, D.C. 20044-4271, on this 17th day of April, 2007.

Declaration of R. Scott Blaze, Attachment 3, Page 3 of 3

CLAIM FOR DAMAGE, INJURY, OR DEATH	supply information reque necessary. See reverse	CTIONS: Please read carefully the instructions on the reverse side and information requested on both sides of the form. Use additional sheet(s) if OMB NO. 1105-0008					
Submit To Appropriate Federal Agency: 2. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. Name, Address of claimant and claimant's personal representative, if 3. See instructions on reverse.i (Number, street, city, State and Zip Co 4. Francisco Gabriel Yole Arteago							
Nortolk, VA 23511	1		iel Yole <i>F</i>	ırteago			
W.S. Coast Guard Claims Coast Guard Island, Bld	Calle 11 Manta, E		28				
Alameda, CA 94501		Mairca, E	Cuador				
3. TYPE OF EMPLOYMENT 4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY	OF ACCIDEN	Т	7. TIME (A.M. or P.M.)		
MILITARY X CIVILIAN 10-4-50	<u> </u>	Oct, 5, 2	005				
8. Basis of Claim (State in detail the known fac involved, the place of accurrence and the c	ause thereof) (Use additio	nal pages if necessa	an:.)				
Wrongful search and s detention, false arre to release the claima international law. Cl Public Vessels Act, a	st, wrongful nt, and boat aim is brough	search of . Violated nt under S	persor milita uits ir	n, neglige ary regula	ently failed ations and		
	PROPERTY S)AMACE		AND RECE	EVED 25.266		
9. NAME AND ADDRESS OF OWNER, IF OTHER T	PROPERTY D		, and Zip Code	1 4 TO 1000 TO 1	CU, N		
Loss of fish and dama			,	E ON	AG-NAVY		
BRIEFLY DESCRIBE THE PROPERTY, NATURE A instructions on reverse side.)	AND EXTENT OF DAMAG	E AND THE LOCATI	ION WHERE PI	ROPER Y WY BE	INSPECTOR ISEE		
10.	PERSONAL INJURY/W	RONGEUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURSTATE NAME OF INJURED PERSON OR DECED All causes of action suffering, lost wages	ent. for the above	e violatio	ns incl	luding pai	n and		
anguish and medical b		ess, IOSC	cargo a	and Lish,	mercar		
11.	WITNES	SES					
NAME		ADDRESS /No	umber, street,	city, State, and Zi	p Code)		
Numerous crew members							
12. (See instructions on reverse)	AMOUNT OF CLAI	M (In dollars) 2c. WRONGFUL DEA	^ TU	12d TOTAL (Exilu	re to specify may cause		
	0,000.00	N/A		forfeiture of \$5,025,00	Your rights.)		
I CERTIFY THAT THE AMOUNT OF CLAIM CON SAID AMOUNT IN FULL SATISFACTION AND F	ERS ONLY DAMAGES AT		ED BY THE AC	CCIDENT ABOVE A	ND AGREE TO ACCEPT		
13a. SIGNATURE OF CLAIMANT (See instruction			3b. Phone num	ber of signatory	14. DATE OF CLAIM		
Transco State of // yel					4/10/06		
CIVIL PENALTY FOR PRESE FRAUDULENT CLAIM				FOR PRESENTING KING FALSE STATI			
\$2,000 plus double the amount of damages sus States. (See 31 U.S.C. 3729.)							
95-109 Previous editions not usable.	NSN 7540-00-634-4044		1 6 2006		ID FORM 95 (Rev. 7-85) (EG) ED BY DEPT. OF JUSTICE 1,2		

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WIKANDA & BUYAKI

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MIRANDA & BOYAKI

Attorneys & Counselors-at-Law

(915) 566-8689 FAX (915) 566-5906

RALPH MIRANDA WALTER L. BOYAN

JOHN G. MUNDIE RICARDO D. GONZALEZ 4521 PERSHING DRIVE EL PASO, TEXAS 79903

September 11, 2006

Mr. G.D. Owens Chief, Claims Pacific JAG Office Coast Guard Island, Bldg, 54-A Alameda, CA 94501-5100

RE:

Ecuadorian claims

Dear Mr. Owen:

At hand is your letter of September 1, 2006.

It would be most helpful if you would forward me the information in your file as how this happened and who is responsible.

As I am sure you know, we have letters from the U.S. Coast Guard which in effect accepts liability and asks for our damages. Do you have those letters? We will be happy to send them.

Our damages are set out in the claims. They are fairly simple. They lost a boat load of fish, they were unable to get back out for three months and our government was kind enough to falsely imprison and illegally search these innocent people for 9 days.

I believe under Adams v. United States, 615 F. 2d 284 (5th Cir. 1980), we have provided your agency with everything we need to. We will file in U.S. District Court shortly as soon as our six months are up (although I do not think the waiting period is required in this case).

It would be helpful if I had more or for that matter <u>any</u> information from your agency. Since my experience with the Navy and the Coast Guard regarding claims is totally negative, why don't you surprise me and make an effort to settle the claim. We will even escort you to Ecuador. It is a beautiful country, and these claimants are very <u>nice</u> people. I am sure they will be most cooperative.

I await your response, if any.

WALTER L. BOYAKI

2006

CLAIMS BRANCH

WLB:11

CLAIM FOR DA	/	INSTRUCTIONS: P		•		side and F	ORM APPROVED	
INJURY, OR S	supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions. OMB NO. 1105-0008 EXPIRES 4-30-88					105-0008		
Submit To Appropriate Federal Agency; 2. Name, Address of control of the					nant and claimant's	personal rences	sentative if pour	
U.S. Navy Claims	S Carito	100	(See Insi	tructions on re	verse.) (Number, s	treet, city, Stat	e and Zip Code)	
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			Crud	adela E	l Limonar	. Villa	D-10	
U.S. Coast Guard Claims Coast Guard Island, Bldg., 54C Alameda, CA 94501				Ave Doming Comin Y Av. de los Almendro Manta, Ecuador				
D MILITARY OX CIVILIAN	. DATE OF BIRTH	5. MARITAL STATU M	Oct.	5, 200		(A.M. OR P.M.)		
8. Basis of Claim (State in detail				hjuty, or death	, identifying person	and property i	nvolved, the	
place of occurence and the cause thereof) (Use additional pages if necessary.)								
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Wrongful searc								
Negligently des								
international la	w. Negligently	caused claima	nt's diplomat	tic/naval c	redential to be	withdraw	n.	
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					/ 💝	RECEIVED	- E	
9.			ERTY DAMAGE		12/2		/ 30/ 10/	
NAME AND ADDRESS OF OWNE	ER, IF OTHER THAN	CLAIMANT (Number,	street, city, State	, and Zip Code) 101	APR RECTO TCU, N	58)	
DOLER V DECODINE THE DROPE					\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	CHAG-MANA	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	
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				7	7 7	231-153	8.03	
Loss of fis	sh and carg	go and dama	age to ve	ssel and	d Claimant	S DUST	mess.	
10.		PERSONAL INJU	RY/WRONGFUL D	DEATH				
STATE NATURE AND EXTENT OF NAME OF INJURED PERSON OR		CAUSE OF DEATH,	WHICH FORMS TH	HE BASIS OF T	HE CLAIM. IF OT	HER THAN CLA	UMANT, STATE	
	S .: S							
	es of action for						'lus	
all action	ns for loss of c	redentials for p	pending assig	nment to V	Vashington, D).C,		
11.		. WI	TNESSES	17.17		PAIN		
NAME	<u> </u>		ADDRESS	(Number isle	olly. State, and	ZID Code)		
Crew me	embers of USS	McClusky.			MAY 1 6	- N		
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12. (See instructions on reverse)	•	AMOUNT OF	CLAIM (in dollars		CLAIMS BRA	NCH		
128. PROPERTY DAMAGE	12b. PERSONAL		2c. WRONGFUL D		12d. TOTAL (Fa	llura ta panellu	may 0.0000	
	120.12.001112	,	20. 11101101 01 1	20,111		your rights.)	may causu	
\$500,000.00	\$10,00	0,000.00	N/A		\$10.500	.000.00		
CERTIFY THAT THE AMOUNT O	F CLAIM COVERS O	NLY DAMAGES AND	INJURIES CAUSE	ED BY THE AC	CIDENT ABOVE AI	ID AGREE TO	ACCEPT SAID	
3a. SIGNATURE OF CHAIMANN				13b. Phone no	umber of signatory	14. DATE OF	CLAIM	
CIVIL PENAL	TE FOR PRESENTIN	· C		MINAL PENAL	TY FOR PRESENTI	NC EBAIRDINE	U X	
FRAUC	DULENT CLAIM	•	CAIR		MAKING FALSE ST		""	
The claiment shall forfeit and pay lus double the amount of demage:	lo the United States	the sum of \$2,000.	Fine of not m	ore than \$10,0	000 or imprisonmer		lhan 5 years	
Soo 31 U.S.C. 3720)			J. 55					

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